IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 30TH NOVEMBER 2007 / 9TH AGRAHAYANA 1929

Bail Appl..No. 7339 of 2007()

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CRIME NO. 792/07 OF NILESHWAR POLICE STATION

PETITIONER/1ST ACCUSED

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MUHAMMED SHALID, AGED 27 YEARS,
S/O. HYDRALI C.H., RESIDING AT MANNAMPURAM HOUSE,
NEAR POLICE QUARTERS, NILESHWAR, KASARAGOD DIST.

BY ADV. SRI.KODOTH SREEDHARAN

RESPONDENTS: COMPLAINANT

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STATE OF KERALA, THROUGH THE
STATION HOUSE OFFICER, NILESHWAR, REP. BY
ITS PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 30/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R. BASANT, J.**

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B.A.No. 7339 of 2007

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Dated this the 30th day of November, 2007

**O R D E R**

Application for anticipatory bail. The petitioner is the first accused. Altogether there are three accused persons. The accused face allegations in a crime registered for offences punishable, inter alia, under Sections 326 and 452 I.P.C. On account of animosity arising from a proceeding instituted before the civil court for eviction, the accused persons allegedly trespassed into the shop of the son of the defacto complainant and indulged in wanton acts of violence and mischief. The defacto complainant suffered a grievous hurt - fracture of nasal bone. Damage was caused to the building also. The incident took place on 19.11.2007. The defacto complainant as well as his son suffered injuries. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He was not the aggressor but

victim of aggression. The learned counsel submits that on a private complaint filed by the petitioner, a counter case also has been registered.

3. The learned Prosecutor opposes the application. He submits that the mere fact that subsequently a private complaint has been filed does not militate against the acceptability of the allegations raised by the defacto complainant.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Prosecutor. There are no features in this case, which justify or warrant the invocation of the extra ordinary equitable discretion under section 438 Cr.P.C. in favour of the petitioner. This I am satisfied is a fit case where the petitioner must resort to the ordinary and normal procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior

notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

**(R. BASANT)**
Judge

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